IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 447 of 2005
In
SPECIAL CIVIL APPLICATION No. 9843 of 2003
With
CIVIL APPLICATION No. 2426 of 2005
In
LETTERS PATENT APPEAL No. 447 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)

Versus

BHURIA SHANKERBHAI LALABHAI - Defendant(s)

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Appearance :

MS PAUROMI SHETH, AGP for Appellant

MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM :HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 12/07/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. With the consent of the parties, the matter is finally heard.

2. Heard the learned counsel for the parties. State being aggrieved by the judgment dated 2.9.2004 delivered by the learned Single Judge in Special Civil Application No. 9843 of 2003 is before this Court with a submission that the learned Single Judge has committed legal error and in not finding the distinction between `re-employment' and `reinstatement'. Her submission is that the provisions of Section 25-H are not in relation to the reinstatement of a person who has been retrenched without observing the provisions of Section 25-F, but the provisions of Section 25-H are in relation to the rights of those persons who have been retrenched and are required to be re-employed on preferential basis. It is submitted that a fair understanding of the judgment of the Supreme Court in the matter of **Central Bank of India Vs. S. Satyam, reported in AIR 1996 Supreme Court, 2526** would make it clear that the judgment has nothing to do with the reinstatement. On the merits, it is submitted that the workman, in fact, was not

falling within the definition of `workman' as he was holding supervisory post.

3. Learned counsel for the respondent-workman submitted that the learned Single Judge was absolutely justified in observing that the judgment in the matter of Central Bank of India (supra) would apply with full force. He also submitted that as the learned Single Judge has refused to interfere in the matter, the question that whether the respondent was holding supervisory post would not assume any importance.

4. In the matter of Central Bank of India (supra), the Supreme Court was faced with the question that whether re-employment of a retrenched workman required by Section 25-H of the Industrial Disputes Act, 1947 is confined only to the category of retrenched workmen covered by Section 25-F who have been in continuous service for not less than one year. The Supreme Court was not considering the question nor could it consider the question the question regarding reinstatement as the scope of Section 25-H is in relation to the re-employment of the retrenched persons only.

5. Learned Single Judge has not considered any other argument raised by the parties, but has placed his strong reliance upon the observations made by the Apex Court in

the matter of Central Bank of India (supra), specially, on paras-9 and 10 of the judgment and has dismissed the writ filed by the State. In our considered opinion and with due respect to the learned Single Judge, we must observe that the reliance placed by the learned Single Judge was misconceived.

6. Present was a case making a complaint regarding violation of Section 25-F and not violation of Section 25-H of the Act. Learned Single Judge, even otherwise, was obliged to consider the question that whether the workman was entitled to invoke jurisdiction of the Labour Court if he was holding supervisory post.

7. The judgment delivered by the learned Single Judge is set aside. The matter is remanded back. The parties would be heard again and the matter would be re-decided by a learned Single Judge in accordance with law. The appeal is allowed. Consequently, Civil Application is disposed of.

[R.S. GARG, J.]

[RAVI R. TRIPATHI, J.]

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